



New York State Office of the State Comptroller
Thomas P. DiNapoli

Division of State Government Accountability

Administration and Collection of Real Estate Transfer Taxes

**Department of Taxation and
Finance**



Report 2017-S-88

January 2019

Executive Summary

Purpose

To determine if the Department of Taxation and Finance (Department) has adequate systems and practices in place to allow it to effectively collect Real Estate Transfer Taxes (RETT), as required by relevant law and regulation. The audit covers RETT collections received during the period January 16, 2016 through December 31, 2017.

Background

The RETT was enacted in 1968 under Tax Law Article 31 as a tax on the transfer of real property, and applies to sales or conveyances of real property or interests in real property when the consideration exceeds \$500, at a rate of \$2 for every \$500 of consideration exchanged. The tax is paid by the grantor (seller), unless the grantor is exempt from the tax or does not pay, in which case the grantee (buyer) must pay the tax. An additional RETT of 1 percent applies to conveyances of residential real property when the consideration is \$1 million or more, and is often referred to as the “mansion tax.” Unlike the basic RETT, the additional RETT is paid by the grantee, unless the grantee is exempt, in which case the grantor must pay it. State RETT collections total about \$1.1 billion annually.

Transfers of interests in real property, including those of real estate investment trusts, easements, and leases, are subject to RETT, although transactions involving properties given as bona fide gifts or sold at tax sale, for example, are exempt. RETT is generally paid during deed recording at county clerk offices, which then remit the tax to the Department. During the period January 16, 2016 through December 31, 2017, the Department collected more than \$2.2 billion from 848,608 RETT tax returns. As of June 2018, 57 New York counties remit RETT information to the Department in hard copy form. The remaining five counties remit this information electronically, including four that use the same electronic system.

Key Findings

- The Department has – with certain exceptions – adequate systems and practices in place that allow it to effectively collect RETT. However, its reliance on hard copy RETT returns and related information from most State counties limits its ability to efficiently and effectively analyze information to identify higher-risk transactions.
- We identified certain RETT errors in the Department’s internal transaction-level system.

Key Recommendations

- Pursue options for collaborating with county recording officers to develop solutions for collecting RETT electronically.
- Ensure that planned improvements to existing systems address the issues identified in this report.

Other Related Audits/Reports of Interest

[Department of Taxation and Finance: Controls Over the Collection of the Public Safety Communications Surcharge \(2016-S-84\)](#)

[Department of Taxation and Finance: Controls Over Unclaimed Bottle Deposits \(2016-S-96\)](#)

**State of New York
Office of the State Comptroller**

Division of State Government Accountability

January 8, 2019

Ms. Nonie Manion
Acting Commissioner
Department of Taxation and Finance
William A. Harriman State Campus
Building 9, Room 217
Albany, NY 12227

Dear Ms. Manion:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage government resources efficiently and effectively and, by doing so, providing accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit entitled *Administration and Collection of Real Estate Transfer Taxes*. The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

*Office of the State Comptroller
Division of State Government Accountability*

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This report is also available on our website at: www.osc.state.ny.us

Background

The Real Estate Transfer Tax (RETT) was enacted in 1968 under Tax Law Article 31 (Law) as a tax on the transfer of real property. The Department of Taxation and Finance (Department) is charged with administering and collecting RETT, which is accomplished through its Office of Processing and Taxpayer Services. RETT applies to sales or conveyances of real property or interests in real property when the consideration exceeds \$500, at a rate of \$2 for every \$500 of consideration exchanged. For example, if the sale price of a home is \$235,000, the seller would pay \$940 in RETT. The Law defines consideration as the price actually paid or required to be paid for real property or an interest in real property, including payment for an option or contract to purchase real property or cancellation of a debt or obligation. The tax is paid by the grantor (seller), unless the grantor is exempt from the tax or does not pay, in which case the grantee (buyer) must pay the tax. An additional RETT of 1 percent applies to conveyances of residential real property when the consideration is \$1 million or more, and is often referred to as the “mansion tax.” Unlike the basic RETT, the additional RETT is paid by the grantee, unless the grantee is exempt, in which case the grantor must pay it. State RETT collections total about \$1.1 billion annually. The City of New York also imposes and collects a similar tax on transfers of real property in New York City that exceed \$25,000.

Most transfers of interests in real property, including those of real estate investment trusts, rights-of-way, easements, and leases, are subject to RETT, although some property transactions are exempt. Exempt transactions include properties sold at a tax sale and those given as bona fide gifts or sold pursuant to the federal bankruptcy act. RETT is generally paid during deed recording at county offices, which then remit the RETT tax return (return, or TP-584), along with the summary tax information prepared by the county office and payment, to the Department. In cases where a deed is not required to be recorded, such as a change in controlling interest of a company or the sale of a business that owns real property, a deed may not need to be recorded to document the change in ownership. In these instances, the filer is required to submit the return and tax due directly to the Department.

In mid-January 2016, the Department implemented a new system that accounts for RETT collections from the counties. During the period January 16, 2016 through December 31, 2017, the Department collected more than \$2.2 billion from the 848,608 RETT returns it received. Of that total, 819,839 returns, totaling almost \$2.1 billion, were processed by a recording officer during deed recording. The remaining 28,769 returns, totaling \$152.5 million, were reported directly to the Department. As of June 2018, 57 New York counties remit RETT information to the Department in hard copy form (paper) via courier or postal service. This information typically includes a monthly summary, the individual TP-584s, and either a check for the tax due or information to enable electronic funds transfer. The remaining five counties remit this information to the Department electronically, including four that use the same electronic system.

Chapter 611 of the Laws of 1993 provided for the transfer of certain RETT collections to the Environmental Protection Fund (EPF). Subsequent legislation provided for varying amounts to be transferred to the EPF; since State Fiscal Year (SFY) 2010-11, \$119.1 million in RETT collections

are required to be annually deposited to the EPF. The remaining RETT revenues, after transfers to the EPF, are deposited to the Clean Water/Clean Air Fund. For each of the SFYs ended March 31, 2017 and March 31, 2016, more than \$1 billion in RETT was deposited to the Clean Water/Clean Air Fund.

Audit Findings and Recommendations

The Department has – with certain exceptions – adequate systems and practices in place that allow it to effectively administer and collect RETT, as required by relevant law and regulation. However, nearly all State counties submit RETT information in hard copy form (versus electronic submission), of which only a small portion is entered into an electronic system and capable of being analyzed. As a result, the Department’s ability to efficiently and effectively analyze information to identify higher-risk transactions is limited. We also identified certain RETT errors in one of the Department’s internal systems.

RETT Administration

There are three Department units with a role in administering and collecting RETT: a processing unit, an audit unit, and a third unit that provides other services, such as storing the hard copy RETT records received from county offices. The processing unit receives the hard copy RETT returns from 57 counties, including the tax collected, and enters the monthly summary RETT data into one of its electronic systems. Processing personnel enter selected transaction-level RETT data that are identified as a priority by either Department personnel or county officials into a separate system. The separate system also houses RETT transaction-level data from the five counties that file electronically, returns that are submitted directly to the Department, and data from RETT returns requesting refunds. The audit unit reviews the transaction-level data for potential errors and risk areas, and also searches for business changes that might result in unreported and uncollected RETT due.

The Department uses Service Level Agreements (SLAs) to establish performance expectations among the units. For example, the processing and audit units entered into an SLA in January 2016, agreeing that the processing unit would enter information from about 100,000 priority paper RETT returns annually, all within 12 months of receipt. However, the agreed-upon number was reduced to only 16,000 later that year. Department officials said this was due to the strain it placed on the processing unit’s limited resources, and that entry of individual RETT transactions often lags behind as other priorities, such as corporate and personal income taxes, take precedence. The Department’s reliance on hard copy information, only some of which is entered into its electronic transaction-level system and available for analysis, limits its ability to analyze RETT transactions to identify outliers that warrant further analysis. We recommend the Department pursue options to facilitate electronic RETT filing at the county level, especially since electronic systems are already in use by some counties.

Errors in RETT Data

There were 278,490 RETT returns received during the period January 1, 2016 through December 31, 2017 for which return information was entered in the Department’s transaction-level system. The returns included those from the five counties that electronically report RETT data as well as those selected to be entered by the processing unit for the other 57 counties. To test the data’s accuracy and completeness, we selected a judgmental sample of 110 RETT returns (TP-584s)

and reviewed the information in 13 of the returns' fields, including grantor name, city, property address, and taxable consideration. The 110 returns included: 20 each from 2 of the 5 counties that report RETT electronically (totaling 40); 20 each from 3 of the 57 counties that report in hard copy (totaling 60); and 10 additional returns with high-dollar RETT amounts, including 6 reported electronically and 4 reported in hard copy. We identified errors on 36 returns (33 percent), including blank fields and incorrect fields. In some instances, the errors were attributable to Department personnel; in others, information provided by the county was inaccurate or incomplete, or the errors were attributable to known but unresolved issues in data transmission. In total, there were 37 errors on 36 returns, as follows:

- Of the two counties that reported RETT electronically, there were no errors in the 20 returns we reviewed for one county. For the other, there were 16 errors in 15 of the 20 returns we reviewed: 14 errors in which the city information was blank, plus a tax map number error and a street address error. Department officials stated that the missing city information is a known issue. They also indicated that a planned update to the data warehouse will correct the issue.
- Of the three counties that reported hard copy RETT returns, there were 12 Department data entry errors in 12 of the 60 returns we reviewed: 7 with an incorrect city name, 1 with an incorrect county name, 2 related to property condition, 1 incorrect address, and 1 tax map number error.
- Of the 10 additional returns we reviewed, there were errors in 9: 3 with Department data entry errors resulting from extra zeroes appended to the payment amount (in one example, a \$536 payment was entered as \$536 billion), and 6 with incorrect city names in the electronic information received from the three counties.

Department officials attributed some of the inaccuracies to human error and also stated that improvements planned for 2019, such as using field validation rules to validate numeric amounts, will help correct the errors.

RETT Collection

To determine whether the amounts shown in counties' monthly summary RETT information were deposited in Department bank accounts, we reviewed five months of RETT collections, totaling \$300.6 million, for the five counties we visited. We found that all \$300.6 million was deposited into the relevant bank accounts in accordance with Department policy.

Recommendations

1. Pursue options for collaborating with county recording officers to develop solutions for collecting RETT electronically.
2. Ensure that planned improvements to existing systems address the issues identified in this report.

Audit Scope, Objective, and Methodology

The objective of our audit was to determine if the Department has adequate systems and practices in place to allow it to effectively collect RETT, as required by relevant law and regulation. The audit covers Department RETT collections during the period January 16, 2016 through December 31, 2017.

To accomplish our objective and assess related internal controls, we reviewed related laws, rules, and regulations; the Department's policies and procedures relevant to RETT administration and collection; and the County Manual distributed by the Department. To determine if reported RETT collections were deposited in Department accounts, we reviewed Department bank statements covering five months of RETT deposits for five judgmentally selected counties. We also interviewed Department personnel to gain an understanding of their practices related to administering and collecting RETT and to confirm our understanding of the related policies and procedures. To better understand how RETT information and payments are collected at the county level, we interviewed officials at five judgmentally selected county offices.

We selected a judgmental sample of 110 of the 278,490 RETT returns received during the period January 1, 2016 through December 31, 2017. Of the 110 returns, our sample included 20 returns randomly selected from each of five counties for a total of 100. We judgmentally selected the five counties to include three that submit RETT information to the Department in hard copy form and two that submit this information, including the return, electronically. From the monthly summaries of RETT returns that were entered in the Department's system, we selected the ten with the highest-dollar RETT due, for a total sample of 110.

We conducted our performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions, and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating threats to organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

Authority

The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

Reporting Requirements

We provided a draft copy of this report to Department officials for their review and formal written comment. We considered their comments in preparing this final report and have attached them in their entirety to the end of the report. The Department cited difficulties in implementing our first recommendation, but agreed with its premise, and agreed with the second recommendation.

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the Department shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and if the recommendations were not implemented, the reasons why.

Contributors to This Report

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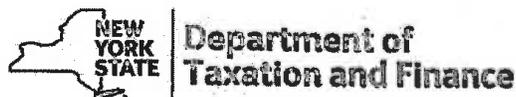
Vision

A team of accountability experts respected for providing information that decision makers value.

Mission

To improve government operations by conducting independent audits, reviews, and evaluations of New York State and New York City taxpayer-financed programs.

Agency Comments



JOSEPH A. CARZO
 Director of Tax Audits
 Audit Division

December 21, 2018

Mr. Stephen Goss
 Audit Director
 Office of the State Comptroller
 Division of State Government Accountability
 110 State Street
 Albany, New York 12236

Re: Report 2017-S-88 - Administration and Collection of Real Estate Transfer Taxes

Dear Mr. Goss:

The Office of the State Comptroller (OSC) examined the Administration and Collection of Real Estate Transfer Taxes (RETT) by the Department of Taxation and Finance (Department) for the audit period covering January 16, 2016 through December 31, 2017. This letter responds to Draft Report 2017-S-88 and its recommendations.

Recommendation 1:

Pursue options for collaborating with county recording officers to develop solutions for collecting RETT electronically.

Department Response:

Currently, only five of New York's 62 counties transmit RETT returns to the Department electronically; the other 57 counties transmit paper RETT returns to the Department. Although the Draft Report characterizes the local preference for paper returns as the Department's "reliance on hard copy RETT returns," the Department does not have the authority to require counties to transmit RETT returns electronically.

The Department has sought to expand county use of electronic transmission, most recently by surveying county interest in a transition to electronic filing. That survey gathered information regarding the software platforms currently used to capture data from the RP-5217 (Real Property Transfer Report), which is also required for most transfers subject to the RETT. We found that the largest software provider expressed a willingness to incorporate the collection RETT information into their application. However, a vast majority of counties indicated they were not willing and/or able to provide the data entry resources to capture the RETT data.

The Department also explored opportunities to leverage real estate transaction e-recording systems to facilitate RETT reporting. While some counties accept e-recorded documents that include electronic RP-5217 and deed data, the three e-recording companies that provide this service have indicated they are not inclined to add the TP-584 data because they do not believe this modification would be cost-effective.

Since the data entry resources are the primary issue deterring counties from transmitting RETT data electronically, the Department will evaluate alternatives to streamline collection of this data.

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Recommendation 2:

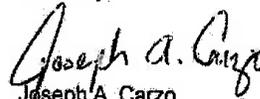
Ensure that planned improvements to existing systems address the issues identified in this report.

Department Response:

The Department undertook development of a new processing system for RETT paper returns prior to the period of this audit. That system is currently in the user acceptance testing stage of development and is expected to be fully implemented by the end of January 2019. The new system includes field validation rules to minimize data entry errors like those identified in the audit. The new system will also include reconciliation of reported payments with actual payments; any errors will be flagged for further review.

Thank you for the opportunity to comment on the draft report. The Department would like to thank the OSC auditors for their professionalism during the conduct of this audit.

Sincerely,



Joseph A. Carzo
Director of Tax Audits